



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1996

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0040

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34721.

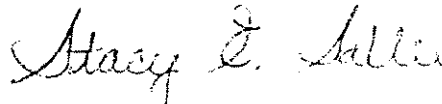
The City of Houston received an open records request for certain records that you contend may be withheld from the public pursuant to the Public Information Act, section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld pursuant to section 552.103(a).

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of

section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/RWP/ch

Ref.: ID# 34721

Enclosures: Submitted documents

cc: Mr. Andy Vickery
Archer, Waldner & Vickery, L.L.P.
2929 Allen Parkway, Suite 2410
Houston, Texas 77019
(w/o enclosures)

¹Because we have concluded that the city may withhold the requested documents pursuant to section 552.103(a) except those to which the opposing party has had previous access, and because neither section 552.107(1) nor section 552.111 of the Government Code would except from disclosure such previously released documents, we need not address your arguments as to the applicability of these two exceptions to the requested information. See Open Records Decision Nos. 630 (1994) (Gov't Code § 552.107(1) waived by release of information to public), 435 (1986) (same for Gov't Code § 552.111).